

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ABSOLUTE NEVADA, LLC,

Plaintiff,

19-cv-11479 (PKC)

-against-

ORDER

GRAND MAJESTIC RIVERBOAT COMPANY
LLC,

Defendant.

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CASTEL, U.S.D.J.

In an Opinion and Order filed September 1, 2020 (Doc 51) this Court principally found non-party Joseph Baer in civil contempt. In a subsequent Order filed December 18, 2020 (Doc 61), the Court denied Baer's motion for reconsideration and other relief. Baer filed a notice of appeal on January 7, 2021 (Doc 64) and the appeal remains pending.

On April 5, 2021, Baer, proceeding pro se, has filed a "petition for a preliminary injunction and motion for temporary restraining order" seeking to enjoin Absolute Nevada, LLC ("Absolute Nevada") and James Kliener, outside counsel to Absolute Nevada, "from filing any demands in arbitration or filing any other legal instrument in arbitration and the arbitration panel consisting of Robrt Shaw, Peter S. Wiswll, and George Tsimis, be enjoined from conducting any hearings, issuing any rulings concerning Capt[ain] Baer or Capt[ain] Baer's lien against the MV Americana and issues pending a ruling of the current appeal."

Baer's civil contempt arises from a Stipulation and Order of this Court entered on January 6, 2020 (the "January 6 Order"). (Doc 19.) Absolute Nevada and Grand Majestic

Riverboat Company LLC are the only parties to the action in which the January 6 Order was entered.

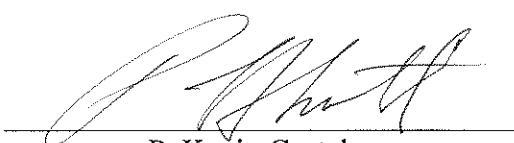
Unquestionably, a Court's injunction, such as the January 6 Order, is binding on more than just the parties to the action and extends, among others, to officers of a party and those who are in active concert or participation with a party. Rule 65(d)(2)(B)-(C), Fed. R. Civ. P. Baer is an officer of Grand Majestic.

On March 25, 2020, a panel of arbitrators issued a Partial Final Award in favor of Absolute Nevada and against Grand Majestic. (Doc 65-4.) Absolute Nevada has now moved to confirm the Partial Final Award. (Doc 65.)

It is Baer's violation of the January 6 Order that brought him before this Court. That he is a non-party contemnor with an active appeal gives him no right to injunctive relief relating to the arbitration. Whether he has submitted to the authority and jurisdiction of the arbitration panel in his personal capacity does not alter his status as a non-party in the proceeding in this Court.¹ He has no right in this Court to enjoin Absolute Nevada from taking action in the arbitration or the arbitration panel to proceed in the manner it sees fit.

The application of non-party contemnor Baer for an order to show cause, temporary restraining order and preliminary injunction is DENIED.

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
April 21, 2021

¹. He has not filed any pleading against Absolute Nevada seeking to vacate any award in its favor. Notably, in the contempt proceeding, he challenges the assertion of personal jurisdiction over him